

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4363 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

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3. Whether Their Lordships wish to see the fair copy of the judgement? No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge? No.

SOUTH GUJARAT POLICE PATEL UNION

Versus

STATE OF GUJARAR

Appearance:

MRS DT SHAH for Petitioners

MR. MUKESH PATEL, A.G.P. for the respondents.

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 19/12/96

ORAL JUDGEMENT

The petitioner Union is a Union of Police Patels appointed under the Bombay Village Police Act, 1867 (hereinafter referred to as the "said Act") seeking by this petition a relief for setting aside the order of the

District Magistrate, Surat, dated 12.12.1980 at Annexure-B to the petition by which he had informed the Surat Zilla Communist Party that all police patels of the District were given yearly remuneration on the basis of the population from 1.6.1980 by the order of the Government. That order of the Government dated 28.7.1980 is now placed on record along with Annexure-B. A direction is sought on the State Government that it should place the police patels of the State in the cadre of Class III or Class IV of the Civil Servants and that their salaries should be made equivalent to the pay scales applicable to Class III or Class IV State servants.

2. The petitioner No. 2 was appointed as a police patel under Section 5 of the said Act till 31.12.1989 as per the order, a copy of which is at Annexure -A to the petition. As police patel he was required to perform various duties as provided under the said Act. There are no provisions in the Act for fixation of salary of police patels and therefore the Government fixed them by a notification. Accordingly, on 15.5.1965 as per the Resolution of the Home and Civil Supplies Department bearing No. BVP-1064-D the Government of Gujarat decided that police patels should be paid with effect from 1.4.1965 at the annual revised rates, remuneration on the basis of population of the village or villages for which the police patel is appointed. Accordingly, the following annual remuneration was prescribed:-

Population of the village(s) Consolidated yearly pay

| | |
|----------------|-----------|
| Upto 500 | Rs. 100/- |
| 501-1000 | Rs. 125/- |
| 1001-2000 | Rs. 150/- |
| 2001-5000 | Rs. 175/- |
| More than 5000 | Rs. 200/- |

The aforesaid rates were revised by the Government Resolution dated 28.7.1980 bearing Home Department No. 1078/5860/M to Rs. 160/-, 200/-, 240/-, Rs. 280/- and Rs. 320/- respectively. It appears that on the basis of this Resolution payments were made to the police patels of these annual amounts.

3. The learned counsel appearing for the petitioners strongly contended that the police patels should be placed on the same footing as Class III or Class IV servants in the Police Department or in the Revenue Department and they should be given all the benefits attached to those posts. It was submitted that having regard to the nature of work required to be done by the

police patels, their position was comparable with the police employees doing similar work. It was submitted that the action of the respondents in making payment of small annual amounts to the police patels was arbitrary and amounted to forced labour or service and therefore violative of Articles 14 and 23 of the Constitution of India.

4. The learned Assistant Government Pleader strongly contended that there was no provision under the said Act for treating the police patels as regular employees of the State Government. Therefore, there was no question of giving them any regular salary like in the case of employees of the Police Force or the Revenue Department. It was submitted that the police patels were paid only such amounts as consolidated yearly pay, even prior to 1.4.1965 and as there was no uniformity in the scales of their remuneration in various villages of the State, the Government was justified in fixing the scales of remuneration for them under the Resolution dated 15.5.1965 which were revised upwards by the impugned Resolution dated 28.7.1980. It was also submitted that the Government was competent to consider the question of emoluments of the police patels and therefore it was not necessary to issue any directions in the matter to the Government.

5. Admittedly, prior to 1.4.1963 when the Gujarat Panchayats Act, 1961, came into force there was office of hereditary Revenue-cum-Police Patels. After the said Act came into force from 1.4.1963 the posts of hereditary Revenue-cum-Police Patels were abolished as noted in the Resolution of the Government dated 15.5.1965. In villages where there was neither a police station nor a police outpost, Police patels were appointed to perform the work relating to law and order. The said Act was enacted for regulation of the village police in the Presidency of Bombay and by virtue of the amended Section 2 it was made applicable also to that part of the State to which it did not extend before the commencement of the Bombay Village Police (Gujarat Extension and Amendment) Act, 1961. The village police was put under the charge of police patel who was to be appointed by the State Government and unless the State Government thought it fit to make separate appointments, the person conducting the duties of revenue patel was to be the police patel as provided by Section 5(1) of the said Act. Under Section 5(2) it is provided that in making such appointments the State will have due regard to the provisions in force for regulating the service of hereditary officers so far as the same may be applicable. The powers of the State

Government under Section 5 may also be exercised by the Magistrate of the District as provided by sub-Section (4) thereof.

6. The duties of the police patels prescribed by Section 6 of the said Act are of furnishing any information called for by the Executive Magistrate and keeping him informed as to the state of crime and all matters connected with the village police, health and general condition of the community in his village. It is his duty to offer every assistance in his power when called upon by the police officers for assistance in performance of their duty. He is required to promptly obey and execute all orders and warrants issued to him by a Magistrate or Police Officer, collect and communicate to the police officer concerned intelligence affecting the public peace and to prevent within the limits of his village commission of offence and public nuisance and to detect and bring offenders to justice. Carelessness or negligence in the discharge of his duties can be penalised as provided by Section 9. If he is subjected to any prosecution for offence, he can be suspended during the trial as provided in Section 9A. Penalties which can be imposed on a police patel for negligence of duty include dismissal.

7. It will thus, be seen that the office of police patel is a statutory office to which appointment can be made by the State Government as also by the Magistrate of a District who can exercise the powers of the State Government under Section 5(4). There is no provision in the said Act for the nature of emoluments that can be given to a police patel or as regards any service conditions. However, as noted above under Section 5(2) in making appointment of a police patel the appointing authority is required to have due regard to the provisions in force for regulating the services of hereditary officers so far as the same may be applicable. In this context it will be noted that under Section 23 of the Bombay Hereditary Officers Act, 1874 the Collector is empowered to fix emoluments of officers appointed under the provisions of that Act. It is provided in Section 23 of that Act that the Collector for this purpose can lawfully assign Watan property or the profits thereof towards the emoluments of officers. Watan property assigned under Section 23 of that Act as remuneration of an officer and the profits of Watan property so assigned could not be alienated or assigned without sanction of the Government as laid down in Section 7 of the said Hereditary Officers Act. It is in the context of these provisions that the fact that the

office of revenue and police patel was held by one person was to be viewed. However, by the Gujarat Patel Watans Abolition Act, 1961 all patel Watans were abolished under Section 4 thereof and no office of police patel was to be hereditary. Therefore, in the context of the appointments of police patels which were made after the abolition of patel Watans from the appointed day i.e. from the date the said Abolition Act came into force in 1961, there remained no question of assigning any Watan property by way of emoluments to the officiators as could have been earlier done under Section 23 of the Bombay Hereditary Officers Act, 1874. This is why the Government in the Resolution dated 15.5.1965 taking note of the fact that the posts of hereditary revenue-cum-police patels were abolished and that police patels were appointed to perform the work relating to law and order in villages where there was no police station or outpost and that they did not have any uniform scale of remuneration, their remuneration was fixed on the basis of the population of the village as per the consolidated yearly pay indicated in that Resolution which was revised upwards under the impugned Resolution dated 28.7.1980. Though the population of a village can be one of the factors required to be considered for fixing the remuneration in such cases it appears that the State Government has overlooked the other important factors including the fact that the police patel was not now entitled to any benefit of Watan property being assigned to him towards his emoluments of working as a police patel. The Collector could not have assigned any Watan property to a person appointed as police patel after the abolition of the patel Watans and therefore the provisions of the Hereditary Officers Act for regulating the service of hereditary officers were not applicable in that regard while appointing police patel.

8. The State Government had decided to remunerate the police patels for their duties prescribed under the statute which they were bound to perform. The word 'remuneration' is a wider term than salary and it means 'quid pro quo'. Whatever consideration a person gets for rendering his services would be a remuneration for such services. An amount of Rs. 160/- per year prescribed by the Government by way of remuneration under the said Resolution on the basis of the population of a village being 500 has no nexus with the nature of duties which are required to be performed by the police patel under the law and does not take into account the real meaning of the word 'remuneration'. Fixing Rs. 160/- per year for services which are required to be rendered under the statutory provisions as police patel failure to which

would entail suspension or dismissal is nothing but exacting forced labour from a person who is appointed as a police patel. Even if the person had accepted appointment knowing that these were the scales of remuneration prescribed, the State cannot contend, as it is sought to be contended on its behalf, that persons accepting appointments as police patels were estopped from claiming remuneration. The concept of remuneration implies adequate and reasonable payment for the services which are required to be rendered. Undoubtedly what should be the reasonable payment is a matter to be decided by the State Government but it should take into account the relevant factors such as, that police patel is no more a hereditary office by virtue of the Patel Watans Abolition Act and that no Watan property could be assigned to a police patel and further that the duties of a police patel were statutorily prescribed failure of which entails penal action. Prescribing a ridiculously low payment of Rs. 160/- per year for discharge of such statutory duties of a police patel is nothing but 'begar' i.e. a form of forced labour and therefore violative of Article 23(1) of the Constitution of India. The said scale of payment prescribed under the impugned Resolution cannot be said to be remuneration for rendering services as a police patel and the fixation of such paltry amount without due regard to the relevant factors indicated above is clearly an arbitrary act on the part of the State Government violating the provisions of Article 14 of the Constitution of India.

9. While this judgement is in progress the learned Assistant Government Pleader has placed on record a Circular dated 10.4.1989 by which the Government had decided not to make any fresh appointments of police patels. It is stated by the learned counsel for the Government that after the circular the office of police patels is being abolished phase-wise and no new appointments are made and as on today the Government has decided to continue the office of police patels only in Dang District. The present petition has been filed by South Gujarat Police Patels Union and it is submitted on behalf of the petitioner that this Union is also concerned about Dang District. It is also submitted that the petition was filed in 1984 when the police patels were being appointed and there was no decision at that time about the abolition of the office. The petitioner No. 2 was appointed till 31.12.1989. Therefore, the question would still remain as to on what basis the police patels on whose behalf this petition has been filed and who had worked as such should be remunerated. The question as to whether the State Government should

continue the system of police patel or as to what should be the number of appointments or whether they should be in a cadre or should remain as officiators is entirely within the province of the State Government and it would not be for this court to express any opinion on that aspect. However, as regards remuneration as noted above, the scales fixed by the Government of Rs. 160/- per year against population of 500 and rising upto Rs. 320/- per year against population of more than 5001 are to say the least ridiculous and arbitrary besides being violative of the provisions of the Article 23 of the Constitution which contemplates a reasonable remuneration for services which are taken by the State.

10. Under the above circumstances the scales fixed by the State Government in the Resolution dated 28.7.1980 bearing No. Patel-1078/5860/M at Annexure-B issued by the State Government in their Home Department are hereby declared to be unconstitutional, illegal and void and the State Government is directed to reconsider the entire issue in accordance with law and in light of the observations made in this judgement and fix a reasonable remuneration that would be payable to the police patels. This fixation of remuneration may be done expeditiously preferably within eight weeks from the date of the receipt of the writ of this order by the concerned department. The difference that may be found payable to those on whose behalf this petition has been filed may be paid expeditiously to them after the fixation of remuneration by the State Government. Rule is made absolute accordingly with no order as to costs.

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